Supreme Court, U.S.
FILED
MAY 15 1987
CLERK

No. 86-1451

In the Supreme Court of the United States

OCTOBER TERM, 1986

OGLALA SIOUX TRIBE OF THE PINE RIDGE INDIAN RESERVATION, PETITIONER

v.

UNITED STATES OF AMERICA AND THE SIOUX TRIBE OF INDIANS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

	Page
Cases:	
City of Springfield v. *Kibbe*, No. 85-1217 (Feb. 25, 1987)	5
Sioux Nation v. *United States*, 650 F.2d 244 (Ct. Cl. 1981)	2
Sioux Tribe v. *United States*:	
6 Cl. Ct. 91 (1984)	2
7 Cl. Ct. 468 (1985)	3
7 Cl. Ct. 481 (1985)	3
42 Ind. Cl. Comm'n 214 (1978)	2
United States v. *Dann*, 470 U.S. 39 (1985)	5
United States v. *Sioux Tribe*, 616 F.2d 485 (Ct. Cl. 1980)	2
Treaty and statutes:	
Treaty with the Sioux Indians, Apr. 29, 1868, 15 Stat. 635	1
Act of Feb. 28, 1877, ch. 72, 19 Stat. 254	2
Indian Claims Commission Act, 25 U.S.C. 70	1

BEST AVAILABLE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1451

OGLALA SIOUX TRIBE OF THE PINE RIDGE INDIAN RESERVATION, PETITIONER

v.

UNITED STATES OF AMERICA AND THE SIOUX TRIBE OF INDIANS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In this 37-year old litigation in which the Sioux Tribe seeks compensation for land ceded to the United States, the Claims Court—without receiving evidence or making any findings of fact—entered as its final judgment on the merits an amount equal to a settlement offer previously extended by the government and rejected by the Tribe. All parties appealed that determination; the court of appeals vacated the award and remanded the case for further proceedings. Petitioner here seeks review of the court of appeals' decision not to consider two wholly separate issues that were neither raised in the Claims Court nor decided by that court.

1. In 1950, pursuant to the Indian Claims Commission Act, 25 U.S.C. 70, the Sioux Tribe commenced this proceeding before the Indian Claims Commission seeking compensation for lands that the United States acquired pursuant to a 1868 treaty between the United States and the Sioux Nation (see 15 Stat. 635). The treaty effected the cession of a large part of the aboriginal lands that the

Sioux held in North and South Dakota, Nebraska, Wyoming and Montana. It also established a reservation, and obligated the United States to provide services and goods and make payments to the Sioux. See generally *United States* v. *Sioux Tribe*, 616 F.2d 485 (Ct. Cl. 1980); Pet. App. 3.[1]

In 1978, the Indian Claims Commission entered a land valuation award of $43,940,700. The Commission rejected the government's claim that it was entitled to offsets for certain payments to the Tribe. See *Sioux Tribe* v. *United States*, 42 Ind. Cl. Comm'n 214, 257 (1978). The Court of Claims upheld the land valuation award, but reversed the Commission's denial of offsets. It remanded the case to its trial division for a determination of "the merits of [the government's] claim for offsets." *United States* v. *Sioux Tribe*, 616 F.2d at 494; see also *id.* at 487; Pet. App. 4-5. Following the remand, the trial court did not proceed with a trial regarding the offset question. It instead directed the parties to brief six legal issues relevant to the offset claims. "Treating these briefings as, in effect, motions for summary judgment, the Claims Court in 1984 and 1985 issued three opinions deciding three of the summary judgment motions" (Pet. App. 6).[2] The court has not ruled upon the other three legal issues.

---

[1] The Sioux Nation also sought compensation for lands acquired by the United States pursuant to the Act of February 28, 1877, ch. 72, 19 Stat. 254. That claim was resolved by an award to the Sioux Nation of approximately $106 million. See *Sioux Nation* v. *United States*, 650 F.2d 244 (Ct. Cl. 1981).

[2] The first summary judgment opinion reiterated the Court of Claims' ruling that the government might be permitted to offset its payments to the tribe against the land valuation award; it granted the government the right to present evidence of its offsetting payments in a forthcoming trial. See *Sioux Tribe* v. *United States*, 6 Cl. Ct. 91 (1984). The second summary judgment opinion found that the government's dealings with the Sioux Tribe had been "egregious and unfair" and that "principles of equity and good conscience" barred the allow-

On February 22, 1985—without giving notice to the parties or receiving any briefs on the propriety of its action—the Claims Court issued an order entering judgment against the United States in the amount of $39,749,700 as "fair and equitable compensation" for the Tribe's claims (Pet. App. 22). This amount was equal to a settlement offer twice proposed by the government and rejected by the Tribe (see *id.* at 5-6).

The Claims Court observed that the eight Indian tribes that comprise the Sioux Nation "lack any apparent cohesion [with respect to] further prosecution of this law suit" (Pet. App. 31-32). Two of the tribes had voted to accept the government's settlement offer; four tribes indicated that they would not be satisfied with monetary compensation, but instead sought return of the land that is the subject of this action; the two remaining tribes also appeared to the Claims Court to be in favor of the latter course of action (see *id.* at 33-41). The court observed that it was "confronted with three alternative courses of action": allowing the litigation to proceed to its conclusion; dismissing the action for lack of jurisdiction on the ground that a majority of the tribes sought return of the land; and "[t]erminat[ing] the instant litigation and enter[ing] a fair and equitable money judgment in favor of the plaintiff" (*id.* at 42). It stated that, because "six of the eight reservation tribes have specifically indicated that they no longer wish to litigate the instant case further, the majority must rule, and the litigation should properly be terminated"

---

ance of offsets for gratuitous payments made by the government (*Sioux Tribe* v. *United States*, 7 Cl. Ct. 468, 469 (1985)). The third summary judgment opinion permitted the government a land adjustment offset for the value of over 3.5 million acres of land that the government had inadvertently conveyed to the Tribe at the time of the 1868 Treaty (*Sioux Tribe* v. *United States*, 7 Cl. Ct. 481 (1985)).

(*ibid.*). The court concluded that entry of the settlement offer as its final judgment was "fair and reasonable to all concerned" (*id.* at 45).

2. The court of appeals unanimously vacated the Claims Court's judgment and remanded the case for further proceedings (Pet. App. 1-16). It first held that the judgment could not be justified on the ground that it implemented the settlement offer. "Unless a case is settled with the consent of the parties," the court of appeals stated, "the duty of the court is to determine the merits and enter judgment accordingly. Where, as here, the court adopts a settlement as its judgment without consideration of the relevant evidence * * *, the court has failed to perform its obligation to determine the case on the basis of the evidence" (*id.* at 10).

The court of appeals further held that "[t]he second ground of the Claims Court's decision—that the settlement offer constituted 'fair and equitable payment for the [Tribe's] historical claim'—also is an inadequate basis for imposing the settlement upon the parties" (Pet. App. 12-13). Because "the government had not yet introduced the detailed evidence upon which it relies to establish particular offsets, there was no basis in the record upon which the Claims Court could determine that the settlement offer constitutes 'fair and equitable compensation for the Sioux tribal land ceded under the 1868 Treaty' " (*id.* at 13). The court of appeals directed the Claims Court to conduct further proceedings to make that determination (*id.* at 14, 15-16).

The court of appeals noted that petitioner had urged it to decide several other issues including "whether [petitioner] is entitled to withdraw from the case" and "whether the Claims Court incorrectly construed certain provisions of the 1868 Treaty and the 1877 Act" (Pet. App. 15). The court "decline[d] to decide those issues," stating that "[t]he only issue open to the Claims Court under the 1980 Court

of Claims remand was 'to determine the merits of defendant's claim for offsets * * *.' The only issue the Claims Court decided in the judgment under appeal is that the proper amount of offsets is $4,200,000. The validity of that determination is the only issue before us and the only one we decide" (*ibid.* (citation omitted)).

3. The decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. Review by this Court is not warranted.

Petitioner is simply wrong in asserting that the court of appeals was required to address legal issues that were neither raised in nor decided by the Claims Court. This Court routinely declines to decide legal issues in that posture. See, *e.g.*, *City of Springfield* v. *Kibbe*, No. 85-1217 (Feb. 25, 1987), slip op. 2; *United States* v. *Dann*, 470 U.S. 39, 50 (1985). The court of appeals—which was sitting as an appellate court, not a trial court—did not err by applying that same rule.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

MAY 1987

U.S. GOVERNMENT PRINTING OFFICE: 1987—181-483/40343